LEWIS M. WEBSTER
v.
BUREAU OF LAND MANAGEMENT

IBLA 86-176 Decided April 16, 1987

Appeal from a decision of Administrative Law Judge John R. Rampton, Jr., affirming a decision of the District Manager, Idaho Falls District, Bureau of Land Management, rejecting application for a grazing lease. ID 30-85-1.

Affirmed.

1. Grazing and Grazing Lands -- Grazing Permits and Licenses: Adjudication -- Grazing Permits and Licenses: Appeals

An Administrative Law Judge's decision adjudicating grazing privileges will not be set aside on appeal if it is reasonable and substantially complies with the provisions of the Federal grazing regulations found at 43 CFR Part 4100.

2. Grazing Leases: Preference Right Applicants -- Recreation and Public Purposes Act

Grazing use of land administered by a county government as a result of a grant to that governmental body pursuant to the Recreation and Public Purposes Act, 43 U.S.C. § 869 (1982), will not be credited as "historical use" for the purposes of adjudicating the competing qualifications of grazing applications pursuant to 43 CFR 4130.1-2.

APPEARANCES: Lewis M. Webster and Ray W. Rigby, Esq., Rexburg, Idaho, for appellant; Robert S. Burr, Esq., Office of the Solicitor, Boise Field Office, Pacific Northwest Region, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Lewis M. Webster has appealed from a decision of Administrative Law Judge John R. Rampton, Jr., dated November 8, 1985. In his decision, Judge Rampton affirmed a letter decision issued by the District Manager, Idaho Falls District, Bureau of Land Management (BLM), dated September 11,

1984, rejecting appellant's grazing lease application and approving a competing grazing lease application filed by Wayne S. Johnson. 1/

In making its initial decision, BLM considered criteria set forth in 43 CFR 4130.1-2, and determined that, when applied to the two competing applicants, all factors but one were equal. The determining factor was the extent of "[h]istorical use of the public lands." 43 CFR 4130.1-2(a). The BLM decision stated:

> Your use of the parcel in conflict "the past ten years or so" was not authorized use under a grazing lease and therefore is not considered historic use. This parcel was issued to Fremont County in 1973 for the sole purpose of a recreation area under the Recreation and Public Purposes Act [(R&PP) 43 U.S.C. § 869 (1982)]. Livestock grazing during this period from 1973 to present was unauthorized under the terms and conditions of the Recreation and Public Purposes Act. This unauthorized use was not considered historic use in my review of both parties' applications.

An appeal was taken from the District Manager's decision pursuant to 43 CFR 4160.4 and the case was argued before Administrative Law Judge Rampton in a hearing held on April 4, 1985. Johnson, who held the conflicting application, appeared as an intervenor. At the hearing, evidence was introduced showing Johnson had leased the tract from 1947 through 1951 and from 1969 through 1974. The previous owner of the Johnson ranch had leased the tract in question prior to 1947. In 1974, Fremont County obtained title to 200 acres, including the disputed tract, pursuant to the Recreation and Public Purposes Act, 43 U.S.C. § 869 (1982) (R&PP grant). Appellant used the disputed tract during the period Fremont County held the land under the R&PP grant. On June 22, 1984, Fremont County relinquished the R&PP grant and administration of the lands once again lodged with BLM.

In his November 8, 1985, decision Judge Rampton noted that BLM had decided to award the lease to Johnson because of his historical use of the tract. Judge Rampton found:

> Appellant's use of the land in question was during a time period when title to that land was in Fremont County and it was not "Public lands" as defined in 43 CFR 4100.0-5. Therefore, appellant does not qualify for historical use preference under 43 CFR 4130.1-2(a). The intervenor was the last lessee of this property from the BLM under a public lands grazing lease. His lease was terminated by a change in title to the land.

1/ The disputed tract is approximately 40 acres, described as E 1/2 SE 1/4 SE 1/4, sec. 1 and E 1/2 NE 1/4 NE 1/4, sec. 12, T. 15 N., R. 42 E., Boise Meridian, Idaho. Both applicants own accessible contiguous base property.

> Involuntary interruptions in a grazing lease do not necessarily destroy historical use preferences. John Rattray, [36 IBLA 282 (1978)]. Accordingly, the intervenor is entitled to historical use preference. Appellant did not present persuasive evidence contradicting the grazing official's determination that both applicants had equal need for the land. It has been determined that both applicants will use proper range management practices, and there are no other criteria to distinguish among them. Both applicants own "base property" contiguous to the lease area and otherwise qualify for grazing leases. Accordingly, I find that appellant has failed to present evidence showing that the Area Manager's Decision is arbitrary or capricious, does not comply with the applicable regulations, or is otherwise in error.

(Decision at 3-4). Judge Rampton affirmed the BLM decision.

In his statement of reasons for appeal to this Board, appellant claims that during the period from 1974 to 1984 the Chairman of the Board of County Commissioners, Fremont County, Idaho, had permitted his use of the land. Appellant also claims Judge Rampton erred in his finding that appellant did not demonstrate authorized historical use of the tract. Appellant alleges his need for the tract is greater, he has less leased grazing land than Johnson, and he has better access because his land is only separated from the disputed tract by a fence, whereas Johnson's land is separated from the tract by a country road and two fences.

In its answer BLM states that Fremont County had no authority to grant grazing privileges on the tract because the property was conveyed to the county for recreational purposes only, 2/ and the county had erected the fences in question to keep livestock off the land (Tr. 52-53). BLM disputes appellant's claim of greater need, observing that appellant and his mother jointly control more grazing land than Johnson.

[1] Implementation of the Taylor Grazing Act of June 28, 1934 (the Act), as amended, 43 U.S.C. §§ 315, 315a-315r (1982), is committed to the discretion of the Secretary of the Interior, Chris Claridge v. Bureau of Land Management, 71 IBLA 46 (1983). For grazing districts on public lands, section 2 of the Act charges the Secretary to "make such rules and regulations" and to "do any and all things necessary * * * to insure the objects of such grazing districts, namely, to regulate their occupancy and use, to preserve the land and its resources from destruction or unnecessary injury, to provide for the orderly use, improvement, and development of the range * * *." 43 U.S.C. § 315a (1982). The Federal Land Policy and Management Act of 1976, P.L. 74-579, 90 Stat. 2743, amended the Taylor Grazing Act and reiterated the Federal commitments to the protection and improvement of Federal range lands. See 43 U.S.C. §§ 1751-1753 (1982).

2/ Because this land was relinquished by Fremont County, we need not discuss the limitations on use of land patented pursuant to the Recreation and Public Purposes Act or the right of the United States to declare a reversion following unauthorized use of such land. 43 U.S.C. § 869-2 (1982); See George Schultz, 81 IBLA 29 (1984).

The District Manager is responsible for deciding the claims of competing applicants pursuant to 43 CFR Subpart 4110. Such officials, being knowledgeable about local conditions, have broad discretion when adjudicating and resolving conflicts between grazing lease applicants. The Corporation of the Great Southwest, 69 IBLA 333 (1982) (also a case in which neither applicant held an expiring lease). An adjudication of grazing privileges will not be set aside on appeal, if the decision is found to be reasonable and substantially complies with the Act and Departmental grazing regulations set forth in 43 CFR Part 4100. 43 CFR 4.478(b); Raymond C. Auge v. Bureau of Land Management, 76 IBLA 83 (1983). A determination by a District Manager will not be overturned in the absence of a clear showing of error. Chris Claridge v. Bureau of Land Management, supra.

A decision reached in the exercise of administrative discretion relating to adjudication of grazing privileges may be regarded as arbitrary and capricious only when it is not supportable on any rational basis, or where it is shown that it does not represent substantial compliance with grazing regulations. An appellant carries the burden of showing, by substantial evidence, that a decision is improper or unreasonable. Bert N. Smith, v. Bureau of Land Management, 48 IBLA 385 (1980).

Similarly, if a decision rendered by an Administrative Law Judge is reasonable, appropriate, supported by the record, and comports with the applicable regulations, then that decision will not be modified on appeal. The record contains no basis for the Board to substitute its judgment for that of Judge Rampton. See Bureau of Land Management v. Holland Livestock Ranch, 54 IBLA 247, 255 (1981), and cases cited therein.

[2] The District Manager rejected appellant's application because appellant could be credited with no historical use and Johnson could. Appellant used the land only during a period of time when it was not "public lands" as that term is defined in 43 CFR 4100.0-5 (i.e., owned by the United States and administered by the Department of the Interior). 3/ BLM correctly declined to credit appellant's use of the land during the period the land was administered by Fremont County. On the other hand, Johnson had used the land when it was "public lands" as defined in 43 CFR 4100.0-5. Johnson's use was involuntarily terminated in 1974, upon the issuance of the R&PP deed to the county. Such involuntary interruption of grazing use does not act to destroy a historical use preference. John Rattray, supra. Johnson was the most recent authorized user of the tract.

Assuming for the moment a permitted use granted by the county would apply, appellant presented no evidence to support his claim that the county had granted permission to use the land. The evidence points to the contrary. The county built fences to exclude livestock. Previous grazing use which was not permissive cannot be used to established a historical use.

3/ In 1978 BLM adopted a broad definition of "public lands," not restricted to public domain lands. See Homer Smelser v. Bureau of Land Management, 75 IBLA 44, 54 (1983) (J. Burski concurring.) However, between 1974 and 1984, the tract at issue here was owned by Fremont County, and was not "public lands."

On review, we find the evidence appellant presented at the hearing was not sufficient to overturn the District Manager's decision, and the claim appellant makes on appeal does not demonstrate error by either BLM or Judge Rampton.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of Administrative Law Judge Rampton is affirmed.

R. W. Mullen
Administrative Judge

We concur:

John H. Kelly
Administrative Judge

Will A. Irwin
Administrative Judge